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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1995)

MD Docket No. 95-3

**MFS COMMUNICATIONS COMPANY, INC.
COMMENTS ON PROPOSED REGULATORY FEE STRUCTURE**

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, and pursuant to the Commission's Notice of Proposed Rulemaking ("*NPRM*")^{1/} hereby submits its comments concerning the Commission's proposed changes to the regulatory fees imposed upon competitive access providers ("CAPs") and other providers of common carrier telecommunications services. As MFS discusses below, the proposed changes would increase the regulatory fees imposed upon CAPs by hundreds of percent, resulting in massive rate shock. In addition, the Commission's methodology for computing the fees is inadequately explained, and arbitrarily imposes an unfair burden on CAPs and other parties that provide data services. For these reasons, MFS respectfully requests that the Commission discard the common carrier regulatory fee proposed in the *NPRM* and adopt a fee structure that applies to all providers of common carrier services according to the revenues they derive from those services.

^{1/} *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, FCC 95-14, released January 12, 1995 (*NPRM*).

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I. ADOPTION OF THE COMMISSION'S PROPOSED METHOD FOR APPLYING COMMON CARRIER REGULATORY FEES WOULD RESULT IN ENORMOUS RATE SHOCK TO CAPS

The Commission acknowledges that its proposal will fundamentally change the way the regulatory fee is imposed on CAPs: previously, CAPs paid the fee according to the number of customers that they served; while under the proposed new fee structure, CAPs would pay according to the number of voice-grade equivalent circuits they provide. This proposed change, if adopted, would increase the regulatory fee on CAPs literally by hundreds or thousands of percent. Indeed, the Commission's proposal would constitute a regulatory surcharge of over \$87.00 on each DS3 circuit provided by a CAP.^{2/}

Such a dramatic increase in the regulatory fee imposed upon CAPs would have an enormously adverse impact on a developing industry. CAP entry into local service markets has prompted local exchange carriers ("LECs") to cut their rates for high capacity services dramatically, resulting in rate reductions of 50% or more in most LEC service areas. While such action is a natural response to competition -- indeed, downward pressure on service rates is a significant benefit that CAPs have brought to the public -- this response has reduced the margins available to service providers. A regulatory surcharge approaching \$90.00 per DS3 circuit would further erode service margins, providing a disincentive for further competitive entry. For this reason, MFS opposes not only the magnitude of the fees proposed by the Commission, but -- as explained in greater detail below -- the imposition of the fees on a per-circuit basis.

^{2/} A DS3 circuit provides capacity adequate to transport 672 voice grade circuits. Imposition of the Commission's proposed \$.13 fee would result in a charge of \$87.36 per DS3 circuit. If the Commission were to adopt its alternative fee proposal, a fee of \$.08 would be imposed per voice grade equivalent, resulting in a regulatory surcharge of \$53.76 per DS3 circuit.

Moreover, the fee structure proposed by the Commission would contravene established Commission policy. The Commission long has maintained policies that prevent regulated carriers from imposing rate shock on customers. The Commission's policy of preventing disruptive and burdensome rate shock is equally applicable to regulated carriers. Indeed, Commission stated as much in the *NPRM* in its assertion that "we want to minimize any adverse impacts to the schedule brought about solely by such a classification change."^{3/} The enormous increase in the regulatory fees imposed upon CAPs clearly is inconsistent with the Commission's stated policy goal, and compels rejection of the fee structure proposed by the Commission.^{4/} As MFS discusses below, imposition of the regulatory fee upon common carriers in proportion to the revenues they derive from regulated activities constitutes a much more equitable and reasonable method of recovering the amounts mandated by Congress.

II. THE COMMISSION'S PROPOSED METHOD FOR ASSESSING FEES ON COMMON CARRIERS IS FUNDAMENTALLY FLAWED AND WOULD IMPOSE EXCESSIVE AND INEQUITABLE FEES ON CAPS

The methodology proposed by the Commission for recovering regulatory fees for common carriers -- imposing a fee based on the estimated amount of voice-grade

^{3/} *NPRM*, FCC 95-15, at ¶ 14.

^{4/} As MFS discusses below, the methods used by the Commission to calculate the fee grossly overstate the fee amount, and will lead to the collection of excessive and unjustified amounts. Similarly, the proposal to impose the fee according to the number of circuits provided by a common carrier is arbitrary, and would result in a disproportionate burden on CAPs. Both of these concerns compel the Commission to discard the proposed fee structure, and impose a regulatory fee according to revenues from regulated services. Should the Commission decide not to take this approach, at a minimum, the Commission should phase in the increased CAP fees over a period of at least five years in order to mitigate the enormous rate shock that would otherwise result. In addition, the Commission should make public the amount of fees collected each year and should provide pro-rata refunds or credits to carriers annually if excessive fees are collected.

equivalent circuits that carriers provide -- would be impracticable to administer, would grossly overstate the amount of fees paid by common carriers, and would impose an inequitable burden on CAPs, and so must be abandoned. The proposed fee structure would be impossible to administer fairly because it focuses on a measure of network usage -- voice-grade equivalent circuits -- that is in a dramatic state of change. The Commission does not explain the basis for its assumptions that LECs provide four million special access lines, or that CAPs and resellers together provide five percent of the lines in service. Absent a stated justification for these assumptions, it is simply impossible to determine if the Commission's proposal is reasonable, and adoption of the proposed standard would be arbitrary and capricious. Moreover, the Commission's proposed methodology is impracticable because it is premised on a figure that is a moving target -- the usage of special access lines is growing dramatically in proportion to switched circuits, and the amount of circuits provided by resellers and competitive service providers has been growing every year for the last decade. In light of these usage patterns, any method that attempts to measure special access usage from historical data, or that attempts to extrapolate special access circuit demand from switched access demand figures, is fundamentally flawed. In addition, because these usage patterns are in a constant state of flux, the Commission would have to recompute its formula for setting the amount of regulatory fees every year -- a process that would deny regulatory certainty to the industry and that would unnecessarily burden scarce Commission resources.

The proposal to set the regulatory fee and to impose it on common carriers based on an estimated number of voice-grade equivalent circuits is inherently unreasonable. The assumption that an estimated number of voice-grade equivalent circuits is a reasonable

surrogate for network usage grossly understates the usage of data circuits. While a single DS1 circuit may be used to provide 24 voice-grade equivalents, it may also be used to provide over 600 low capacity data circuits. The Commission's selection of voice-grade equivalent circuits as the standard measure of network usage therefore ignores data usage, grossly understates the number of customer units, and results in excessive common carrier regulatory fees.

As discussed above, the Commission's proposed methodology for computing and imposing regulatory fees is inadequately supported, and is based on highly speculative assumptions. Indeed, the veracity of the Commission's network usage assumptions cannot be determined without imposing burdensome new reporting requirements on all common carriers. Moreover, even if the Commission's assumptions are correct for current levels of network usage (and MFS contends that they are not), usage patterns will continue to change on a yearly basis, and will render the Commission's proposed fee structure obsolete. These problems can all be remedied simply by imposing the regulatory fees on common carriers in proportion to the revenues they derive from regulated common carrier services. Revenues are widely reported for many common carriers, and are readily verified by reference to corporate tax filings. In addition, unlike usage patterns for particular types of services, revenues do not fluctuate as dramatically from year to year, and revenue-based regulatory fees would be less volatile and more predictable. Finally, regulated revenues provide a more realistic surrogate for actual network usage than estimated numbers of circuits. For all these reasons, MFS respectfully requests that the Commission abandon its proposal to calculate and


imposed regulatory fees on the basis of estimated voice-grade equivalent circuits and adopt a fee structure that will impose fees based upon regulated revenues.

III. CONCLUSION

For the reasons discussed above, the Commission should discard the fee proposals established in the *NPRM* for common carrier regulatory fees and should impose fees in proportion to revenues derived from regulated common carrier services. By doing so the Commission can ensure that its fee structure will be demonstrably reasonable and equitable, and will not unduly burden the resources of the Commission or the industry. In the alternative, should the Commission adopt the fee structure proposed in the *NPRM* -- and MFS maintains that to do so would be both arbitrary and inequitable -- the Commission should phase in the fees payable by CAPs over a period of at least five years in order to avoid rate shock, and should provide annual refunds or credits in cases of overpayment.

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Dated: February 13, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MFS COMMUNICATIONS
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